



March 30, 2000

Ms. Mary E. Reveles  
Assistant County Attorney  
Fort Bend County  
301 Jackson, Suite 621  
Richmond, Texas 77469-3108

OR2000-1238

Dear Ms. Reveles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133550.

The Fort Bend County District Attorney's Office (the "office") received a request for the following: (1) a list of all open cases involving domestic violence prior to February 1, 1999, including the name and race of each alleged assailant; (2) the status of each domestic violence case assigned to Ms. Gloria Rincones and prosecution dates; (3) information regarding Ms. Rincones' qualifications as Assistant District Attorney; and (4) all information and sources of information regarding cause number 81772. You assert that you have released information pertaining to Ms. Rincones' qualifications. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

With regard to the first requested item, you assert that the information does not exist in the format requested and your office does not maintain a list of defendants, including their race. Thus, you assert that the information will not be produced because it does not exist. Chapter 552 of the Government Code does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990). Further, the fact that it may be burdensome to provide the information does not relieve a governmental body of its responsibility to comply with the Public Information Act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (1976), *cert. denied*, 430 U.S. 931 (1977) (cost or difficulty in complying with act does not determine availability of information), Open Records Decision No. 497 (1988). If your office holds information from which the requested information can be obtained, your office

must provide that information to the requestor unless it is otherwise excepted from disclosure.

You also claim that, if the list existed in the requested format, the list would be protected under section 552.101 and common law privacy because the information pertains to domestic violence cases. Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information protected by the common law right of privacy. *Industrial*, 540 S.W.2d at 683-85. The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person’s private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Id.* In Open Records Decision No. 611 (1992), this office concluded that common law privacy does not, as a matter of law, except all police records regarding violence among family members and that such determinations must be made on a case-by-case basis. We conclude that a list of open domestic violence cases and the names of the defendants and their race would not be protected under common law privacy.

With regard to the second and fourth requests concerning the status of domestic violence cases assigned to Ms. Rincones and information regarding cause number 81722, you assert that the information is excepted from disclosure under section 552.108. However, you have not submitted information or a representative sample regarding the status of domestic violence cases assigned to Ms. Rincones as required by section 552.301(e) of the Government Code. Gov’t Code § 552.301(e)(1)(D) (governmental body must submit a copy of the specific information requested or representative samples). Pursuant to section 552.302 of the Government Code, a governmental body’s failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov’t Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov’t Code § 552.302); Open Records Decision No. 319 (1982). You have not demonstrated a compelling reason to withhold the information under section 552.108 and; therefore, you must release the status of domestic violence cases assigned to Ms. Rincones.

However, you have submitted information regarding cause number 81722 and, therefore, we will address your section 552.108 claim. You assert that the following parts of section 552.108 apply to the requested information:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if:

(1) the release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication . . .

Gov't Code § 552.108(a)(1)-(2), b(1)-(2). A governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov't Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You have not informed us of the status of cause number 81772 or explained how release of this report interferes with the detection, investigation, or prosecution of crime. Furthermore, the documents in cause number 81772 do not supply an explanation of the status of the case. Thus, your office has failed to establish that section 552.108 applies to cause number 81772. Therefore, we conclude that the office may not withhold cause number 81772 under section 552.108.

However, we note that cause number 81772 contains medical records. Section 159.002(b) of the Occupations Code, the Medical Practices Act (the "MPA"), provides the following:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

Thus, access to medical records is governed by provisions outside the Public Information Act. *See* Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. Occ. Code §§ 159.002, .003. Medical records may be released only in accordance with the MPA. Open

Records Decision No. 598 (1991); *see* Occ. Code §§ 159.004, .005.<sup>1</sup> We have marked the documents that are medical records subject to the MPA.

Cause number 81772 also contains Emergency Medical Services (“EMS”) records. Section 773.091 of the Health and Safety Code provides in part:

(b) Records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this chapter.

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(g) The privilege of confidentiality under this section does not extend to information regarding the presence, nature of injury or illness, age, sex, occupation, and city of residence of a patient who is receiving emergency medical services.

Thus, the EMS report, except for the information specified in subsection (g), is deemed confidential by section 773.091 and, therefore, may be released only in accordance with chapter 773 of the Health and Safety Code. *See* Health & Safety Code §§ 773.091-.094.<sup>2</sup> We have marked the EMS records that are subject to section 773.091 of the Health and Safety Code.

Cause number 81772 also contains driver’s license numbers, license plate numbers, VIN numbers, and social security numbers. Section 552.130(a) of the Government Code excepts from disclosure information relating to a driver’s license and motor vehicle title or registration issued by an agency of this state. However, section 552.023 of the Government Code grants a special right of access to a person or a person’s authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person’s privacy interests. Because section 552.130 protects a person’s privacy interest, the requestor has a special right of access to his

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<sup>1</sup>Section 159.004(5) provides for the disclosure of confidential information to a person who has the written consent of the patient as authorized by section 159.005. Section 159.005 states that the consent must be in writing and signed by the patient, parent, or legal guardian and specify the medical records to be released, the reasons for the release and the person to whom the information is to be released. Occ. Code § 159.005(a)-(b).

<sup>2</sup>We note that records that are confidential under section 773.091 may be disclosed to “any person who bears a written consent of the patient or other persons authorized to act on the patient’s behalf for the release of confidential information.” Health & Safety Code §§ 773.092(e)(4), .093. Section 773.093 provides that a consent for release of EMS records must specify: (1) the information or records to be covered by the release; (2) the reasons or purpose for the release; and (3) the person to whom the information is to be released.

driver's license number, license plate number, VIN number and the office must release these items to the requestor. However, driver's license numbers, license plate numbers and VIN numbers belonging to others must be protected from disclosure under section 552.130(a). We have marked the information that you must withhold under section 552.130(a).

Further, social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the social security number contained in cause number 81772 was obtained or maintained by your office pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes your office to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution your office, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, your office should ensure that this number was not obtained or maintained by the office pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, we note that your office must provide information relating to the first request if your office holds information from which the requested information may be obtained. Further, information pertaining to domestic violence cases is not protected under section 552.101 and common law privacy. We also determined that your office must release the status of domestic violence cases because of your failure to submit the information and that you may not withhold cause number 81772 because you failed to meet your burden under section 552.108. However, you must withhold the marked medical and EMS records as well as the marked driver's license numbers, license plate numbers, and VIN numbers under section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

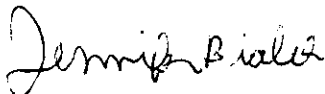
governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB/ljp

Ref: ID# 133550

Encl. Marked documents

cc: Mr. Ralph N. Worley  
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(w/o enclosures)